

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230010809

APPLICANT REQUESTS:

- consideration for promotion to the rank/grade of major (MAJ)/O-4 by a Special Selection Board (SSB)
- revocation of Orders Number 22-096-00005 to allow reinstatement in the U.S. Army Reserve (USAR)

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Options upon Non-Selection for Promotion after a Second Consideration, 15 November 2021
- Memorandum – Subject: Decision Memorandum – Administrative Separation Board, 25 February 2022
- Orders Number 22-096-00005, 6 April 2022
- Memorandum – Subject: Resolution of Unfavorable Information, 29 December 2022
- Email communication

FACTS:

1. The applicant states in pertinent part that he was involved in a 3.5 year long investigation which concluded with her receipt of a General Officer Memorandum of Reprimand (GOMOR) that was later placed in a restricted file following the conclusion of a Department of the Army Suitability Evaluation Board (DASEB) (Docket Number AR20220005150). She contests that throughout the investigation she was flagged and unable to be promoted to MAJ resulting in non-selection for promotion on two occasions. She further notes that following the board proceedings she was permitted to remain in the military, but her unit failed to process her request for a Mandatory Removal Date (MRD) extension in a timely manner resulting in her being discharged from the military.

2. A review of the applicant's available service records reflects the following:

a. After previously serving as an enlisted Soldier in the Regular Army, on 11 February 2013, the applicant was appointed a Reserve commission as a 66H (Medical-Surgical Nurse) at the rank/grade of first lieutenant (1LT)/O-2. Based upon her professional experience as a nurse, she was awarded 3 years of constructive/entry grade credit resulting in a 11 August 2011 Date of Rank (DOR).

b. On 4 August 2014, the U.S. Army Human Resources Command (AHRC) issued Orders Number B-08-404934 announcing the applicant's promotion to the rank/grade of captain (CPT)/O-3 with a 3 July 2014 DOR.

c. On 22 August 2014, the applicant completed the Army Medical Department (AMEDD) Basic Officer Leaders Course.

d. On 24 June 2017, the applicant completed the AMEDD Captains Career Course.

e. On 5 May 2019, the applicant received a GOMOR for engaging in an inappropriate relationship in violation of Army Regulation (AR) 600-20 (Army Command Policy) paragraph 4-14.

f. On 11 July 2019, the GOMOR issuing authority directed that the reprimand be placed in her permanent record.

g. On 15 November 2021, the applicant was notified of her 2nd non-selection for promotion. In result of her non-selection, the initiation of separation action was required. The applicant was provided 30 days to make an election of options. If her election of options was not received by the suspense date, she would be administratively transferred to the Retired Reserve, if eligible, or discharged in accordance with the law.

h. On 6 April 2022, Headquarters, U.S. Army Reserve Command (USARC) issued Orders Number 22-096-00005 discharging the applicant from the USAR on 6 May 2022, due to being twice non-selected for promotion to MAJ.

i. On 29 November 2022, a Suitability Evaluation Board (Docket Number AR20220005150) was conducted to consider the applicant's petition to have the 5 May 2019 GOMOR and all related documents placed in her restricted file. The board noted that the GOMOR had served its intended purpose and therefore voted to approve her request for placement in her restricted file. This action is neither retroactive, nor does it constitute a basis for promotion reconsideration.

3. The applicant provides the following a:

a. Memorandum – Subject: Decision Memorandum – Administrative Separation Board, dated 25 February 2022, reflective of information pertaining to the applicant. On

8 January 2020, involuntary separation action was initiated on behalf of the applicant for alleged conduct unbecoming of an officer. On 18 August 2021, a board was conducted to review said actions. The board found based upon a preponderance of evidence that the applicant did not engage in an inappropriate relationship with an enlisted Soldier. The board further determined that the misconduct did not warrant separation and therefore recommended that she be retained in the USAR. The Commander, U.S. Army Reserve Command approved the board's recommendation to retain the applicant in the USAR.

b. Email communication reflective of information pertaining to the applicant's request for an MRD extension noting that although the request was initiated, it was not uploaded into the system for review. The applicant's unit provided that they had recently lost the administrative support of their Unit Administrator. Upon review of the circumstances, it was noted that an email was sent out to the applicant pertaining to her separation action. The applicant was afforded 30 days advance notification of the pending action. The applicant was advised that if she believed that an error or injustice had occurred that might preclude her discharge, she would need to petition the Army Review Boards Agency; the applicant had already initiated a request to have the GOMOR removed from her permanent record. On 9 May 2022, the applicant's unit administrative support contacted AHRC and was advised that the applicant was issued separation orders with an effective date of 6 May 2022 and therefore would need to direct their concerns to the ABCMR.

4. On 21 December 2023, the USARC, Chief, Military Personnel Division provided an advisory opinion noting that after careful consideration of all records the applicant's request warranted partial relief. Specifically, that her discharge order be revoked returning her to an active status in the USAR if she is selected for promotion to MAJ by an SSB. The applicant was removed from an active status in accordance with Title 10, United States Code (USC), Section 14505 and AR 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers), paragraph 4-33c. due to her two-time non-selection for promotion to MAJ. The derogatory information was transferred to the restricted portion of her Army Military Human Resources Record (AMHRR) after the convening date of the boards which did not recommend her for promotion to MAJ. Based on the removal of the derogatory information it is recommended that AHRC, Reserve Component Promotions, consider referral of the applicant to an SSB.

5. On 27 December 2023, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. As of 16 May 2024, the applicant has not responded.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant received a GOMOR for engaging in an inappropriate relationship and the GOMOR issuing authority directed that the reprimand be placed in her permanent record. On 15 November 2021, the applicant was notified of her 2nd non-selection for promotion. As a result of her non-selection, the initiation of separation action was required. The applicant was provided 30 days to make an election of options. If her election of options was not received by the suspense date, she would be administratively transferred to the Retired Reserve, if eligible, or discharged in accordance with the law. She was discharged from the USAR on 6 May 2022, due to being twice non-selected for promotion to MAJ.

b. Shortly before her discharge, she petitioned the DASEB for removal of the derogatory information from her file. On 29 November 2022, the DASEB noted that the GOMOR had served its intended purpose and therefore voted to approve her request for placement in her restricted file. This action is neither retroactive, nor does it constitute a basis for promotion reconsideration. The Board reviewed the USARC G-1 advisory and found no grounds for the SSB for two reasons: First, the DASEB's decision was neither retroactive, nor does it constitute a basis for promotion reconsideration, and second, the derogatory information was transferred to the restricted portion of her AMHRR after the convening date of the boards which did not recommend her for promotion to MAJ. Notwithstanding the advisory opinion provided in the processing of this case, this case, the Board did not find an error or an injustice in the promotion board that did not select her.

c. The Board addressed possible reinstatement but found no error or injustice in her separation. As such, the Board found no reason for reinstatement. The Board also noted that nothing prevents the applicant from seeking reappointment into the Army, by submitting an application for appointment, provided she meet all criteria.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers Other than General Officers) provides policy for selecting and promoting commissioned officers of both the Army National Guard of the United States (ARNGUS) and the U.S. Army Reserve (USAR), and warrant officers of the USAR.

a. Section II (Selection Board Procedures) provides that promotion advisory board/SSB will be convened to reconsider officers who were either improperly omitted from consideration due to administrative error, or who were non-selected for mandatory promotion as a result of material error. SSB are conducted as an additional duty of regularly scheduled mandatory Reserve of the Army selection boards for the same competitive category.

b. Section III (Promotion Reconsideration Boards) provides that Officers and warrant officers who have either failed of selection for promotion, or who were erroneously not considered for promotion through administrative error may be reconsidered for promotion by either a promotion advisory board or a SSB, as appropriate. These boards are convened to correct/prevent an injustice to an officer or former officer who was eligible for promotion but whose records:

- through error, were not submitted to a mandatory promotion selection board for consideration
- contained a material error when reviewed by the mandatory selection board

c. The AHRC, Office of Promotions will normally not determine that a material error existed if the administrative error was immaterial, or, the officer in exercising reasonable diligence, could have discovered and corrected the error or omission in the OMPF.

d. The AHRC, Office of Promotions may find that a material error caused the nonselection of an officer by a promotion board. That agency must first determine that there is a fair risk that one or more of the following circumstances was responsible to include:

- an adverse document, required to be removed from an officer's OMPF as of the convening date of the board, was seen by the board
- the record erroneously reflected that an officer was ineligible for selection for educational or other reasons

e. Section V (Nonselection for Promotion) provides that an officer who twice fails to be selected for promotion to the grade of CPT, MAJ, or LTC will be removed from active status (see paragraph 4-33) unless subsequently placed on a promotion list, selected for continuation, or retained under any other provision of law.

2. AR 600-8-29 (Officer Promotions) prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the Active-Duty List (ADL). Chapter 6 (SSB) provides that SSBs may be convened under Title 10, USC, section 628 (SSB) to consider, or reconsider commissioned or warrant officers for promotion when Headquarters Department of the Army (HQDA) determines that one or more of the following circumstances exist:

a. Administrative error (Title 10, USC, section 628(a)(1)) (SSB required) - an officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error.

b. Material unfairness (Title 10, USC, section 628(b)(1)) (HRC discretionary).

c. An officer will not be considered or reconsidered for promotion by an SSB when the following occurs:

(1) The officer is pending removal from a promotion or recommended list and the removal action was not finalized by the SECARMY before the next selection board convened to consider officers of his or her grade.

(2) An administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error in the DA Form 4037 or AMHRR. The DA Form 4037 is a summary document of information generally available elsewhere in the officer's record. It is the officer's responsibility to review his or her DA Form 4037, AMHRR, and MBF before the board convenes and to notify the board, in writing, of possible administrative deficiencies.

(3) Letters of appreciation, commendation, or other commendatory data for awards below the Silver Star are missing from the officer's AMHRR.

(4) The PSB did not see a nonmandatory DA Form 4037 submitted to HRC after the suspense established in the promotion board zone of consideration MILPER message.

(5) The PSB did not see a DA official photograph or saw an outdated DA official photograph.

(6) The PSB did not consider correspondence to the board president that was delivered to the Commanding General, U.S. Army Human Resources Command after the cutoff date for such correspondence established in the respective promotion board zone of consideration MILPER message.

(7) The consideration in question involved an officer below the promotion zone.

3. AR 600-8-105 (Military Orders) states only the organization that published the original order may amend, rescind, or revoke the order. Commanders may revoke award orders if issued by another headquarters only when authorized under AR 600-8-22.

4. Title 10, USC, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

//NOTHING FOLLOWS//